

AMENDED IN ASSEMBLY MAY 28, 2015

AMENDED IN ASSEMBLY APRIL 27, 2015

AMENDED IN ASSEMBLY APRIL 14, 2015

AMENDED IN ASSEMBLY MARCH 18, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 348

**Introduced by Assembly Member Brown
(Coauthors: Assembly Members Gipson and Mathis)**

February 17, 2015

An act to amend Sections 1266, 1279.2, and 1420 of the Health and Safety Code, relating to health care facilities.

LEGISLATIVE COUNSEL'S DIGEST

AB 348, as amended, Brown. Health facilities: complaints: investigations.

Existing law provides for the licensure and regulation by the State Department of Public Health of health care facilities, including long-term health care facilities, as defined. Existing law establishes procedures to be followed when the department receives a written or oral complaint about a long-term health care facility. A complaint is defined to mean any notice to the department, other than a report from the facility, of an alleged violation of applicable requirements of state or federal law or any alleged facts that might constitute a violation.

This bill would ~~require~~ *require, effective January 1, 2018*, the department to complete its investigation of ~~the a complaint or a report from a long-term health facility~~ within 45 working days of its receipt, except that this period may be extended up to an additional 30 working

days if the department has diligently attempted, but has not been able, to obtain necessary evidence related to the investigation. The bill would require the department, if it extends an investigation beyond 45 working days, to notify the complainant, in writing, of the basis for the extension. The bill would require, effective July 1, 2016, that the department's written determination provide specific findings concerning each alleged violation and include a summary of the evidence upon which the determination is based. ~~The bill would require the department to comply with those specified time periods established for investigations and inspections of complaints from a facility of an alleged violation of applicable requirements of state or federal law or any alleged facts that may constitute an alleged violation of these requirements.~~ The bill would also require the department to analyze its compliance with the timeframes for investigations on a quarterly basis and post those findings on its Internet Web site.

Existing law provides the complainant with 5 business days after receipt of the notice of the department's determination in which to request an informal conference, as specified.

This bill would instead provide the complainant with 15 days after receipt of the notice in which to request an informal conference.

Existing law requires the department, when it receives a complaint or report involving a general acute care hospital, acute psychiatric hospital, or special hospital, that indicates a specified level of danger, to complete an investigation of the complaint or report within 45 days. Existing law also requires the department to submit to the Legislature, and publish on its Internet Web site, a staffing and systems analysis that includes the number and timeliness of complaint investigations, among other things.

This bill would authorize a 30-day extension to the time period to complete the investigation if the department has diligently attempted, but has not been able, to obtain necessary evidence related to the investigation. The bill would require the department, if it extends an investigation beyond 45 days, to notify the complainant, in writing, of the basis for the extension. The bill would also require the staffing and systems analysis prepared by the department to include data regarding the department's compliance with these requirements.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 1266 of the Health and Safety Code is amended to read:

1266. (a) The Licensing and Certification Division shall be supported entirely by federal funds and special funds by no earlier than the beginning of the 2009–10 fiscal year unless otherwise specified in statute, or unless funds are specifically appropriated from the General Fund in the annual Budget Act or other enacted legislation. For the 2007–08 fiscal year, General Fund support shall be provided to offset licensing and certification fees in an amount of not less than two million seven hundred eighty-two thousand dollars (\$2,782,000).

(b) (1) The Licensing and Certification Program fees for the 2006–07 fiscal year shall be as follows:

Type of Facility	Fee	
General Acute Care Hospitals	\$ 134.10	per bed
Acute Psychiatric Hospitals	\$ 134.10	per bed
Special Hospitals	\$ 134.10	per bed
Chemical Dependency Recovery Hospitals	\$ 123.52	per bed
Skilled Nursing Facilities	\$ 202.96	per bed
Intermediate Care Facilities	\$ 202.96	per bed
Intermediate Care Facilities-Developmentally		
Facilities-Developmentally Disabled	\$ 592.29	per bed
Intermediate Care Facilities-Developmentally		
Facilities-Developmentally Disabled-Habilitative	\$1,000.00	per facility
Intermediate Care Facilities-Developmentally		
Facilities-Developmentally Disabled-Nursing	\$1,000.00	per facility
Home Health Agencies	\$2,700.00	per facility
Referral Agencies	\$5,537.71	per facility
Adult Day Health Centers	\$4,650.02	per facility
Congregate Living Health Facilities	\$ 202.96	per bed
Psychology Clinics	\$ 600.00	per facility
Primary Clinics-Community-Primary		
Clinics-Community and Free	\$ 600.00	per facility
Specialty Clinics-Rehab-Specialty Clinics-Rehab		
Clinics		
(For profit)	\$2,974.43	per facility
(Nonprofit)	\$ 500.00	per facility

1	Specialty Clinics-Surgical-Specialty		
2	<i>Clinics-Surgical</i> and Chronic	\$1,500.00	per facility
3	Dialysis Clinics	\$1,500.00	per facility
4	Pediatric Day Health/Respite Care	\$ 142.43	per bed
5	Alternative Birthing Centers	\$2,437.86	per facility
6	Hospice	\$1,000.00	per provider
7	Correctional Treatment Centers	\$ 590.39	per bed

8

9 (2) (A) In the first year of licensure for intermediate care
 10 facility/developmentally disabled-continuous nursing (ICF/DD-CN)
 11 facilities, the licensure fee for those facilities shall be equivalent
 12 to the licensure fee for intermediate care facility/developmentally
 13 disabled-nursing facilities during the same year. Thereafter, the
 14 licensure fee for ICF/DD-CN facilities shall be established pursuant
 15 to the same procedures described in this section.

16 (B) In the first year of licensure for hospice facilities, the
 17 licensure fee shall be equivalent to the licensure fee for congregate
 18 living health facilities during the same year. Thereafter, the
 19 licensure fee for hospice facilities shall be established pursuant to
 20 the same procedures described in this section.

21 (c) Commencing February 1, 2007, and every February 1
 22 thereafter, the department shall publish a list of estimated fees
 23 pursuant to this section. The calculation of estimated fees and the
 24 publication of the report and list of estimated fees shall not be
 25 subject to the rulemaking requirements of Chapter 3.5
 26 (commencing with Section 11340) of Part 1 of Division 3 of Title
 27 2 of the Government Code.

28 (d) Notwithstanding Section 10231.5 of the Government Code,
 29 by February 1 of each year, the department shall prepare the
 30 following reports and shall make those reports, and the list of
 31 estimated fees required to be published pursuant to subdivision
 32 (c), available to the public by submitting them to the Legislature
 33 and posting them on the department's Internet Web site:

34 (1) A report of all costs for activities of the Licensing and
 35 Certification Program. At a minimum, this report shall include a
 36 narrative of all baseline adjustments and their calculations, a
 37 description of how each category of facility was calculated,
 38 descriptions of assumptions used in any calculations, and shall
 39 recommend Licensing and Certification Program fees in accordance
 40 with the following:

1 (A) Projected workload and costs shall be grouped for each fee
2 category, including workload costs for facility categories that have
3 been established by statute and for which licensing regulations
4 and procedures are under development.

5 (B) Cost estimates, and the estimated fees, shall be based on
6 the appropriation amounts in the Governor's proposed budget for
7 the next fiscal year, with and without policy adjustments to the fee
8 methodology.

9 (C) The allocation of program, operational, and administrative
10 overhead, and indirect costs to fee categories shall be based on
11 generally accepted cost allocation methods. Significant items of
12 costs shall be directly charged to fee categories if the expenses can
13 be reasonably identified to the fee category that caused them.
14 Indirect and overhead costs shall be allocated to all fee categories
15 using a generally accepted cost allocation method.

16 (D) The amount of federal funds and General Fund moneys to
17 be received in the budget year shall be estimated and allocated to
18 each fee category based upon an appropriate metric.

19 (E) The fee for each category shall be determined by dividing
20 the aggregate state share of all costs for the Licensing and
21 Certification Program by the appropriate metric for the category
22 of licensure. Amounts actually received for new licensure
23 applications, including change of ownership applications, and late
24 payment penalties, pursuant to Section 1266.5, during each fiscal
25 year shall be calculated and 95 percent shall be applied to the
26 appropriate fee categories in determining Licensing and
27 Certification Program fees for the second fiscal year following
28 receipt of those funds. The remaining 5 percent shall be retained
29 in the fund as a reserve until appropriated.

30 (2) (A) A staffing and systems analysis to ensure efficient and
31 effective utilization of fees collected, proper allocation of
32 departmental resources to licensing and certification activities,
33 survey schedules, complaint investigations, enforcement and appeal
34 activities, data collection and dissemination, surveyor training,
35 and policy development.

36 (B) The analysis under this paragraph shall be made available
37 to interested persons and shall include all of the following:

38 (i) The number of surveyors and administrative support
39 personnel devoted to the licensing and certification of health care
40 facilities.

1 (ii) The percentage of time devoted to licensing and certification
2 activities for the various types of health facilities.

3 (iii) The number of facilities receiving full surveys and the
4 frequency and number of followup visits.

5 (iv) The number and timeliness of complaint investigations,
6 including data on the department's compliance with the
7 requirements of Section 1279.2.

8 (v) Data on deficiencies and citations issued, and numbers of
9 citation review conferences and arbitration hearings.

10 (vi) Other applicable activities of the licensing and certification
11 division.

12 (3) The annual program fee report described in subdivision (d)
13 of Section 1416.36.

14 (e) The reports required pursuant to subdivision (d) shall be
15 submitted in compliance with Section 9795 of the Government
16 Code.

17 (f) (1) The department shall adjust the list of estimated fees
18 published pursuant to subdivision (c) if the annual Budget Act or
19 other enacted legislation includes an appropriation that differs
20 from those proposed in the Governor's proposed budget for that
21 fiscal year.

22 (2) The department shall publish a final fee list, with an
23 explanation of any adjustment, by the issuance of an all facilities
24 letter, by posting the list on the department's Internet Web site,
25 and by including the final fee list as part of the licensing application
26 package, within 14 days of the enactment of the annual Budget
27 Act. The adjustment of fees and the publication of the final fee list
28 shall not be subject to the rulemaking requirements of Chapter 3.5
29 (commencing with Section 11340) of Part 1 of Division 3 of Title
30 2 of the Government Code.

31 (g) (1) Fees shall not be assessed or collected pursuant to this
32 section from any state department, authority, bureau, commission,
33 or officer, unless federal financial participation would become
34 available by doing so and an appropriation is included in the annual
35 Budget Act for that state department, authority, bureau,
36 commission, or officer for this purpose. Fees shall not be assessed
37 or collected pursuant to this section from any clinic that is certified
38 only by the federal government and is exempt from licensure under
39 Section 1206, unless federal financial participation would become
40 available by doing so.

1 (2) For the 2006–07 state fiscal year, a fee shall not be assessed
2 or collected pursuant to this section from any general acute care
3 hospital owned by a health care district with 100 beds or less.

4 (h) The Licensing and Certification Program may change annual
5 license expiration renewal dates to provide for efficiencies in
6 operational processes or to provide for sufficient cashflow to pay
7 for expenditures. If an annual license expiration date is changed,
8 the renewal fee shall be prorated accordingly. Facilities shall be
9 provided with a 60-day notice of any change in their annual license
10 renewal date.

11 SEC. 2. Section 1279.2 of the Health and Safety Code is
12 amended to read:

13 1279.2. (a) (1) In any case in which the department receives
14 a report from a facility pursuant to Section 1279.1, or a written or
15 oral complaint involving a health facility licensed pursuant to
16 subdivision (a), (b), or (f) of Section 1250, that indicates an
17 ongoing threat of imminent danger of death or serious bodily harm,
18 the department shall make an onsite inspection or investigation
19 within 48 hours or two business days, whichever is greater, of the
20 receipt of the report or complaint and shall complete that
21 investigation within 45 days.

22 (2) Until the department has determined by onsite inspection
23 that the adverse event has been resolved, the department shall, not
24 less than once a year, conduct an unannounced inspection of any
25 health facility that has reported an adverse event pursuant to
26 Section 1279.1.

27 (b) In any case in which the department is able to determine
28 from the information available to it that there is no threat of
29 imminent danger of death or serious bodily harm to that patient or
30 other patients, the department shall complete an investigation of
31 the report within 45 days.

32 (c) The 45-day period may be extended up to an additional 30
33 days if the department has diligently attempted, but has not been
34 able, to obtain necessary evidence related to the investigation. If
35 the department extends an investigation beyond 45 days, it shall
36 notify the complainant, in writing, of the basis for the extension,
37 and shall include in the notice any outstanding evidence and the
38 sources from which the evidence has been sought, and the
39 anticipated completion date.

1 (d) The department shall notify the complainant and licensee
2 in writing of the department's determination as a result of an
3 inspection or report.

4 (e) For purposes of this section, "complaint" means any oral or
5 written notice to the department, other than a report from the health
6 facility, of an alleged violation of applicable requirements of state
7 or federal law or an allegation of facts that might constitute a
8 violation of applicable requirements of state or federal law.

9 (f) The costs of administering and implementing this section
10 shall be paid from funds derived from existing licensing fees paid
11 by general acute care hospitals, acute psychiatric hospitals, and
12 special hospitals.

13 (g) In enforcing this section and Sections 1279 and 1279.1, the
14 department shall take into account the special circumstances of
15 small and rural hospitals, as defined in Section 124840, in order
16 to protect the quality of patient care in those hospitals.

17 (h) In preparing the staffing and systems analysis required
18 pursuant to Section 1266, the department shall also report regarding
19 the number and timeliness of investigations of adverse events
20 initiated in response to reports of adverse events.

21 SEC. 3. Section 1420 of the Health and Safety Code is amended
22 to read:

23 1420. (a) (1) Upon receipt of a written or oral complaint, the
24 department shall assign an inspector to make a preliminary review
25 of the complaint and shall notify the complainant within two
26 working days of the receipt of the complaint of the name of the
27 inspector. Unless the department determines that the complaint is
28 willfully intended to harass a licensee or is without any reasonable
29 basis, it shall make an onsite inspection or investigation within 10
30 working days of the receipt of the complaint. In any case in which
31 the complaint involves a threat of imminent danger of death or
32 serious bodily harm, the department shall make an onsite inspection
33 or investigation as soon as practicable, and in no case more than
34 24 hours of the receipt of the complaint. In any event, the
35 complainant shall be promptly informed of the department's
36 proposed course of action and of the opportunity to accompany
37 the inspector on the inspection or investigation of the facility. Upon
38 the request of either the complainant or the department, the
39 complainant or his or her representative, or both, may be allowed
40 to accompany the inspector to the site of the alleged violations

1 during his or her tour of the facility, unless the inspector determines
2 that the privacy of any patient would be violated thereby.

3 (2) When conducting an onsite inspection or investigation
4 pursuant to this section, the department shall collect and evaluate
5 all available evidence and may issue a citation based upon, but not
6 limited to, all of the following:

7 (A) Observed conditions.

8 (B) Statements of witnesses.

9 (C) Facility records.

10 (3) ~~The~~*Effective January 1, 2018, the* department shall complete
11 its investigation within 45 working days from receipt of the
12 complaint. The 45-working-day period may be extended up to an
13 additional 30 working days if the department has diligently
14 attempted, but has not been able, to obtain necessary evidence
15 related to the investigation.

16 (4) ~~If~~*Effective January 1, 2018, if* the department extends an
17 investigation beyond 45 working days, it shall notify the
18 complainant, in writing, of the basis for the extension, and shall
19 include in the notice any outstanding evidence and the sources
20 from which the evidence has been sought, and the anticipated
21 completion date.

22 (5) Within 10 working days of the completion of the complaint
23 investigation, the department shall notify the complainant and
24 licensee, in writing, of the department's determination as a result
25 of the inspection or investigation.

26 (6) Effective July 1, 2016, the department's written
27 determination shall provide specific findings concerning each
28 alleged violation, and shall include a summary of the evidence
29 upon which the determination is made. The written determination
30 shall not disclose the names of individual residents.

31 (b) Upon being notified of the department's determination as a
32 result of the inspection or investigation, a complainant who is
33 dissatisfied with the department's determination, regarding a matter
34 which would pose a threat to the health, safety, security, welfare,
35 or rights of a resident, shall be notified by the department of the
36 right to an informal conference, as set forth in this section. The
37 complainant may, within 15 days after receipt of the notice, notify
38 the director in writing of his or her request for an informal
39 conference. The informal conference shall be held with the
40 designee of the director for the county in which the long-term

1 health care facility that is the subject of the complaint is located.
2 The long-term health care facility may participate as a party in this
3 informal conference. The director's designee shall notify the
4 complainant and licensee of his or her determination within 10
5 working days after the informal conference and shall apprise the
6 complainant and licensee in writing of the appeal rights provided
7 in subdivision (c).

8 (c) If the complainant is dissatisfied with the determination of
9 the director's designee in the county in which the facility is located,
10 the complainant may, within 15 days after receipt of this
11 determination, notify in writing the Deputy Director of the
12 Licensing and Certification Division of the department, who shall
13 assign the request to a representative of the Complainant Appeals
14 Unit for review of the facts that led to both determinations. As a
15 part of the Complainant Appeals Unit's independent investigation,
16 and at the request of the complainant, the representative shall
17 interview the complainant in the district office where the complaint
18 was initially referred. Based upon this review, the Deputy Director
19 of the Licensing and Certification Division of the department shall
20 make his or her own determination and notify the complainant and
21 the facility within 30 days.

22 (d) Any citation issued as a result of a conference or review
23 provided for in subdivision (b) or (c) shall be issued and served
24 upon the facility within three working days of the final
25 determination, unless the licensee agrees in writing to an extension
26 of this time. Service shall be effected either personally or by
27 registered or certified mail. A copy of the citation shall also be
28 sent to each complainant by registered or certified mail.

29 (e) A miniexit conference shall be held with the administrator
30 or his or her representative upon leaving the facility at the
31 completion of the investigation to inform him or her of the status
32 of the investigation. The department shall also state the items of
33 noncompliance and compliance found as a result of a complaint
34 and those items found to be in compliance, provided the disclosure
35 maintains the anonymity of the complainant. In any matter in which
36 there is a reasonable probability that the identity of the complainant
37 will not remain anonymous, the department shall also notify the
38 facility that it is unlawful to discriminate or seek retaliation against
39 a resident, employee, or complainant.

1 (f) For purposes of this section, “complaint” means any oral or
2 written notice to the department, other than a report from the
3 facility, of an alleged violation of applicable requirements of state
4 or federal law or any alleged facts that might constitute a violation
5 of these requirements.

6 (g) The department shall apply the timeframes for investigation
7 or inspection established in this section to a report from the facility
8 of an alleged violation of applicable requirements of state or federal
9 law or any alleged facts that might constitute a violation of those
10 requirements.

11 (h) The department shall analyze its compliance with the
12 timeframes for investigations established in this section on a
13 quarterly basis, and shall, on a quarterly basis, post findings from
14 the analysis on its Internet Web site. The analysis shall provide
15 data on the department’s performance, and shall include, at a
16 minimum, all of the following data elements:

17 (1) The number of open investigations.

18 (2) The number of completed investigations.

19 (3) The number and percentage of investigations completed
20 within the 45-working-day timeframe.

21 (4) The number and percentage of investigations that required
22 a 30-working-day extension.

23 (5) The number and percentage of investigations that required
24 a 30-working-day extension and were completed within the
25 extended time period.

26 (6) The average length of time to complete an investigation.

27 (7) The average length of time to complete an investigation that
28 was not completed by the end of the 30-working-day extended
29 time period.

30 (i) Nothing in this section shall be interpreted to diminish the
31 department’s authority and obligation to investigate any alleged
32 violation of applicable requirements of state or federal law, or any
33 alleged facts that might constitute a violation of applicable
34 requirements of state or federal law, and to enforce applicable
35 requirements of law.